

PMOS EXHIBIT 1

EXCERPTS OF RYAN DIETZ'S
DECEMBER 6, 2018 DEPOSITION
TRANSCRIPT

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EXHIBITS See Index

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civ. A. No. 17-12472-DLS

LUIGI WARREN,)
)
 Plaintiff,)
)
 vs)
)
 THE CHILDREN'S HOSPITAL)
 CORPORATION,)
)
 Defendant.)

DEPOSITION of RYAN DIETZ, a witness
called on behalf of the plaintiff, taken
pursuant to the applicable provisions of the
Federal Rules of Civil Procedure, before
Marie C. Leonard, Registered Professional
Reporter, Certified Shorthand Reporter
No. 146799, and a Notary Public in and for the
Commonwealth of Massachusetts, at Children's
Hospital, Landmark Center, 401 Park Drive,
Boston, Massachusetts, on Thursday,
December 6, 2018, commencing at 1:03 p.m.

SHEA COURT REPORTING SERVICES
15 Court Square, Suite 920
Boston, Massachusetts 02108
(617) 227-3097

1 Is that clear?

2 A. Yes, that's clear.

3 Q. Very good.

4 I would like to start by asking some
5 questions about your background and
6 experience, Mr. Dietz. You are currently
7 senior licensing manager at the Technology and
8 Innovation Development office at Boston
9 Children's Hospital; is that correct?

10 A. That's correct.

11 Q. And you started in that position in 2012 --

12 A. Correct.

13 Q. -- is that correct?

14 And were you previous -- was your
15 previous position director of the Office of
16 Technology Development at the Immune Disease
17 Institute --

18 A. Correct.

19 Q. -- is that correct?

20 And you were there in that position
21 from 2002 to 2012, for about ten years; is
22 that also correct?

23 A. That's not completely accurate, no.

24 Q. Can you please clarify that?

1 MR. FOLKMAN: Objection.

2 A. The title -- the title that I received for
3 director changed at a point in time that I
4 don't recall. And my prior title was
5 technology transfer associate.

6 Q. Okay. And you had a JD degree, which is a
7 juris doctor, as I understand it, from Suffolk
8 University Law School --

9 A. That's --

10 Q. -- is that correct?

11 A. That's correct.

12 Q. And is it correct you also have a bachelor's
13 degree in psychology and criminal justice; is
14 that correct?

15 A. That's correct.

16 Q. And you studied biotechnology at Boston
17 University; is that correct?

18 A. That is correct.

19 Q. All right. And in your position at Immune
20 Disease Institute, you were responsible for
21 the licensing of technology to Moderna
22 Therapeutics; is that correct?

23 MR. FOLKMAN: Objection.

24 A. That's correct.

1 Q. And in your current position at Boston
2 Children's Hospital, is the Moderna license
3 still administered by you; is that correct?

4 MR. FOLKMAN: Objection.

5 A. I -- I don't necessarily know what the
6 question is. "Administered" is a little
7 complicated for me to understand.

8 Q. Okay. What is your role with respect to the
9 Moderna licensing agreement at Boston
10 Children's Hospital?

11 A. I am the manager of the technology cases and
12 the licenses associated with those cases; and,
13 therefore, the license is something I oversee
14 on behalf of Children's Hospital.

15 Q. Okay. And there are multiple licensing
16 offices at Children's Hospital; is that
17 correct?

18 A. That's correct.

19 Q. And -- but you are the licensing officer who
20 oversees the Moderna license --

21 A. I -- I oversee the cases and the --

22 Q. -- is that correct?

23 A. -- and the licenses associated with those
24 cases.

1 correct?

2 A. I don't know the intent of entering into the
3 agreement.

4 Q. In 2012 IDI did merge with Boston Children's
5 Hospital; is that correct?

6 A. That is correct.

7 Q. And that -- so IDI ceased to exist as an
8 independent entity on October 1, 2012 and
9 became a program within Boston Children's
10 Hospital; is that your understanding?

11 MR. FOLKMAN: Objection, compound,
12 calls for a legal conclusion.

13 A. That is my understanding.

14 Q. Can you summarize in your own words the
15 differences between Immune Disease Institute
16 and Boston Children's Hospital --

17 MR. FOLKMAN: Objection.

18 Q. -- in terms of size and admission?

19 MR. FOLKMAN: Objection.

20 A. They are different --

21 Q. Is it correct that the -- sorry.

22 A. They are different --

23 Q. Go ahead.

24 A. -- in size significantly. They are primarily

1 different in their clinical capacity of the
2 hospital versus the Immune Disease Institute
3 having no clinical focus or employees.

4 Q. Both of these organizations are nonprofit
5 entities; is that correct?

6 A. I believe so.

7 Q. The Immune Disease Institute, to restate what
8 you just said, was strictly a research
9 institution, and Boston Children's Hospital
10 does research but it's also -- treats patients
11 and teaches medical students; is that correct?

12 A. I don't believe I stated that they are
13 strictly one thing or another. So I don't
14 believe your restatement is accurate.

15 Q. Is it true that Boston Children's Hospital
16 treats patients, but that it's also a teaching
17 and research institution; is that correct?

18 A. Yes.

19 Q. And is it correct that the Immune Disease
20 Institute was solely a scientific institute
21 and not involved in the treatment of patients
22 or the training of medical students?

23 A. I don't believe that is accurate.

24 Q. In what respect is it not accurate?

1 A. I understand medical students are trained
2 there, maybe not in clinical, but in research
3 capacity. And there may be people at IDI who
4 had clinical roles somewhere outside of the
5 Immune Disease Institute.

6 Q. Okay. The licensing agreement involving the
7 technology from Derrick Rossi's lab was --
8 involved the Immune Disease Institute and
9 Moderna. So the Immune Disease Institute, am
10 I correct, was the licensor, Moderna the
11 licensee?

12 A. Correct.

13 Q. And am I correct that the Immune Disease
14 Institute had a written policy regarding the
15 sharing of revenues with employee-inventors --

16 THE COURT REPORTER: What's --

17 Q. -- and licensed technology?

18 MR. FOLKMAN: Dr. -- excuse me.

19 Dr. Warren, I think the court reporter had a
20 little trouble hearing that question. Could
21 you say it again, please.

22 DR. WARREN: Yes.

23 Q. The Immune Disease Institute had a written
24 policy regarding the sharing of revenues from

1 license -- licensing of inventions that
2 covered employee-inventors; is that correct?

3 A. That is correct.

4 Q. And that's fairly typical for major research
5 institutions; is that correct?

6 A. That is my understanding.

7 Q. To have such a policy?

8 And Boston Children's Hospital has its
9 own written policy for sharing -- governing
10 the sharing of revenue for licensed inventions
11 with inventors and other parties?

12 MR. FOLKMAN: Objection.

13 A. I'm sorry. That -- that's a question?

14 Q. Is that correct?

15 A. Yes, that is correct.

16 Q. Does Boston Children's Hospital also have its
17 own written policy regarding licensing and
18 revenue sharing?

19 A. Yes, it does.

20 Q. Did the Immune Disease Institute take an
21 equity stake in Moderna in partial
22 consideration for the licensing of the
23 technology from Derrick Rossi's lab?

24 A. Yes, they did.

1 Q. And the equity stake is treated as a royalty
2 for the purposes of distributing -- for the
3 purposes of sharing revenues with
4 employee-inventors; is that correct?

5 MR. FOLKMAN: Objection.

6 A. I believe so.

7 Q. And is that also true of the Boston Children's
8 Hospital policy?

9 MR. FOLKMAN: Objection.

10 A. I believe so.

11 Q. Did the Immune Disease Institute ever during
12 the course of its independent existence reveal
13 publicly that it had accepted equity from
14 Moderna in partial consideration for a license
15 to technology?

16 A. I don't know.

17 Q. But you never heard of it during that --

18 A. I'm not aware of --

19 Q. You were never aware of such a thing?

20 A. Could you clarify your question?

21 Q. Did the Immune Institute ever disclose in a
22 public forum such as a -- an annual report or
23 in academic publication that it had taken an
24 equity stake in Moderna and also consideration

1 for a license?

2 A. I don't know.

3 Q. Do you know if according to the IDI policy on
4 inventions, the institution was supposed to do
5 that?

6 MR. FOLKMAN: Objection.

7 A. I don't know if we were supposed to do that.

8 Q. Did the Immune Disease Institute or Boston
9 Children's Hospital ever disclose to either --
10 sorry. Let me strike that. I'm going to
11 begin again.

12 The license that IDI granted to Moderna
13 is based on patent applications with two
14 inventors, Derrick Rossi and the plaintiff, in
15 this case, Luigi Warren; is that correct?

16 MR. FOLKMAN: Objection.

17 A. That's correct.

18 Q. And there are no other inventors on those
19 filings?

20 A. That's correct.

21 Q. Did the Immune Disease Institute ever reveal,
22 in the course of its existence, the acceptance
23 of equity to either of those two inventors,
24 Dr. Warren or Dr. Rossi?

1 MR. FOLKMAN: Objection.

2 A. I don't know.

3 Q. But you're not aware of that happening?

4 A. I'm not aware of it, no.

5 Q. And you were director of the licensing office
6 at Immune Disease Institute?

7 MR. FOLKMAN: Objection, argumentative.

8 A. That's correct.

9 Q. And how many individuals worked in that
10 office?

11 A. At what time frame?

12 Q. Let's say 2010 to 2012.

13 A. One.

14 Q. You're referring to yourself?

15 A. Correct.

16 Q. Sorry. Could you repeat your answer?

17 A. Correct.

18 Q. I didn't catch that.

19 A. Correct.

20 Q. Are you aware of Boston Children's Hospital
21 ever communicating or ever disclosing in a
22 public forum that Moderna license -- that IDI
23 or BCH had taken equity from Moderna?

24 A. I'm not aware.

1 Q. You're not aware of that happening?

2 A. Correct.

3 Q. Do you know if the Boston Children's Hospital
4 policy on licensing says that that should
5 happen?

6 A. I'm not aware of that.

7 Q. Are you familiar with Boston Children's
8 Hospital's written policy on inventions and
9 the licensing and technology?

10 A. I am familiar with it.

11 Q. You are familiar with it?

12 A. Correct.

13 Q. But you're not aware of any provisions in
14 there that would call for public disclosure of
15 the acceptance of equity in return for a
16 license?

17 MR. FOLKMAN: Objection, asked and
18 answered.

19 A. That is correct.

20 Q. Let's turn to the plaintiff's contact review
21 in 2017 regarding the Moderna license. Do you
22 recall being contacted on one thing by Luigi
23 Warren, the plaintiff in this case --

24 MR. FOLKMAN: Objection.

1 DR. WARREN: All right.

2 MR. FOLKMAN: Okay. Okay. Go ahead.

3 Q. All right. Let's turn to page 6 of the
4 policy, page 6 being the policy -- original
5 document pagination.

6 A. Yes.

7 Q. And the second paragraph from the top of the
8 page says, "Each covered person shall sign a
9 participation agreement which the covered
10 person agrees to comply with this policy. A
11 copy of a participation agreement is attached
12 as Exhibit A.

13 A. I see that.

14 Q. Do you know from your time at -- as the
15 director of tech transfer in the Immune
16 Disease Institute, whether that practice was
17 followed?

18 A. It's my understanding that all new employees
19 went through a process where they were given
20 the policy and they were required to sign it.

21 Q. Okay. Let's turn to page 8 of the document.

22 A. Yes.

23 Q. And could you please read for me -- you see
24 the Section "H, Distribution of Net Proceeds,"

1 A. I think it assumes that that is a complete
2 description of what went into play, and I
3 don't know whether that's the case.

4 Q. All right.

5 All right. Can you tell me when the
6 first distributions of the licensing revenue
7 from the Moderna case took place?

8 A. I don't have details of the distributions.

9 Q. Can you tell me if any steps were taken by
10 IDI or BCH to inform either Dr. Warren or
11 Dr. Rossi that license and policy that was
12 going to be applied had a different percentage
13 for the investors?

14 A. I don't recall communications informing --
15 informing the inventors of those changes.
16 We've talked about a couple -- the description
17 earlier of various splits, but I'm not
18 familiar with other communications that you
19 might be asking about.

20 Q. Going back to the IDI technology policy or
21 inventions policy, are you familiar with what
22 steps were taken to inform IDI employees of
23 the contents of that policy?

24 A. Can you -- we're just pulling that exhibit up.

1 Are you referring to Exhibit 11?

2 Q. Yes.

3 A. And your question?

4 Q. In the technology policy what steps were taken
5 to make employees or employee-inventors aware
6 of what was in that document?

7 MS. MacIVER: Objection.

8 Q. So you stated that one aspect was to provide a
9 participation agreement during orientation and
10 have the parties -- have the employee sign
11 your participation agreement; is that correct?

12 A. That's correct.

13 Q. Are you aware of the technology policy being
14 posted on the corporate Internet for IDI?

15 A. I believe it was.

16 DR. WARREN: Okay. Now, I believe I
17 have no further questions at this time; and I
18 will ask Ms. MacIver whether she has any
19 question.

20 MS. MacIVER: I just have one. I'm
21 going to put in front of Ryan -- it's
22 Exhibit 21, and then it was page BCH001106.

23 * * * * *

24

CERTIFICATE

Commonwealth of Massachusetts
Norfolk, ss.

I, Marie C. Leonard, Registered
Professional Reporter, Certified Shorthand
Reporter, and a Notary Public in and for the
Commonwealth of Massachusetts, do hereby
certify:

That RYAN DIETZ, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by the said
witness.

IN WITNESS WHEREOF, I have hereunto set
my hand and notarial seal this 15th day of
January, 2019.

Marie C. Leonard

RPR, CSR No. 146799

My commission expires
on June 17, 2022